

REMARKS

At the onset, Applicant wishes to thank the Examiner for the courtesy extended to the Applicant's attorney representative in an interview held on September 13, 2005. As indicated in the Interview Summary prepared by the Examiner and dated September 19, 2005, proposed amendments to the claims and drawings were discussed. The Examiner stated that proposed amendments regarding the shape of the plunger and position of a hole in the handle would raise issues of new matter, and consequently the then proposed after final amendments would not be entered. In view of the Examiner's comments, a revised set of amended claims have been prepared and are contained in this Amendment.

Claims 1, 9, and 17-22 are pending in the application. Claims 2-8 and 10-16 have been cancelled. Claims 1 and 9 have been amended to more particularly point out and claim the invention. New claims 17-22 have been added. Support for the amendments and new claims is found at least in the original drawings. The specification has been amended to delete paragraph [0024.1] added in an amendment mailed on May 17, 2005. No new matter has been added by the amendments.

Objection to the Drawings

In the Office Action dated February 23, 2005, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a) for failure to show every feature of the invention specified in the claims. Specifically, the Examiner stated that the element of claims 4 and 12 reciting that the "handle has an opening which is in fluid communication with the cavity, such that foodstuff may enter the cavity through the opening" is not shown in the drawings. Applicant proposed drawing amendments to address this objection in the response dated May 17, 2005. In the Office Action dated August 10, 2005, the Examiner refused entry of the drawing amendment as introducing new matter. In view of cancellation of claims 4 and 12, and of the feature of the handle having an opening in fluid communication with the cavity, Applicant respectfully submits that the original drawings are in full compliance with the requirements set forth in 37 C.F.R. § 1.83(a) and 37 C.F.R. § 1.121(d), and respectfully requests that the objection to the drawings under 37 C.F.R. § 1.83(a) in the Office Action of February 23 be withdrawn.

Objection to the Specification

The Examiner has objected to the specification, as amended in the amendment filed on May 17, under 35 U.S.C. § 132(a) as introducing new matter. Specifically, Examiner has objected to the addition of new paragraph [0024.1] to the specification. In view of the Examiner's comments, Applicant has deleted paragraph [0024.1]. Applicant respectfully submits that specification is in full compliance with the requirements of 35 U.S.C. § 132(a) and respectfully requests that the objection to the specification be withdrawn.

Claim Rejection – 35 U.S.C. § 112

In the Office Action dated August 10, the Examiner rejected claims 1-16 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states that the original specification fails to adequately convey the relative orientation of an opening extending in a direction parallel to the longitudinal axis. In view of the Examiner's comments, Applicant has deleted the phrase "forming an opening extending in a direction parallel to a longitudinal axis of the plunger, the opening and cavity forming a continuous flow channel from the first end to the second end" from each of the independent claims. Applicant respectfully submits that claims 1-16 are in full compliance with the requirements of 35 U.S.C. § 112. Applicant requests the rejection of claims 1-16 under 35 U.S.C. § 112, first paragraph, be withdrawn.

Furthermore, in the Office Action dated February 23, the Examiner rejected claims 4 and 12 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner stated that the specification failed to reasonably convey to one skilled in the art the best mode in the positioning and connection of the opening in the handle recited in claims 4 and 12. In view of cancellation of claims 4 and 12, Applicant respectfully submits that the rejection of claims 4 and 12 under 35 U.S.C. § 112 is now moot.

Claim Rejection – 35 U.S.C. § 102 – Claims 1, 5, 9, and 13

The Examiner has rejected claims 1, 5, 9, and 13 under 35 U.S.C. § 102(e), or alternatively § 102(a), as being anticipated by U.S. Patent Application Publication No.

2002/0080678 (Daniels, Jr., hereinafter "Daniels"). The Examiner states that Daniels teaches a spherical handle, an elongate plunger, and a trough cavity extending from a first end to a second end. The rejections of claims 1 and 9, as amended, are respectfully traversed. Rejection of claims 5 and 13 under 35 U.S.C. § 102(b) as anticipated by Daniels is moot in view of cancellation of these claims.

Referring to Figs. 2 and 5, Daniels discloses a beverage mixer 10 having a stir stick 62 provided with a handle 70 and a stir portion 74. As illustrated, the stir portion 74 preferably includes at least two fins 120 and 122 arranged transversely, forming four chambers. A terminal end of the stir portion 74 is provided with a bumper 126. The bumper 126 is disclosed to surround the lower end of the stir portion 74 (see page 4, paragraph [0048]).

Claims 1 and 9, as amended, each recite, *inter alia*,

...
an elongate plunger having first and second ends, the plunger having only one trough-shaped cavity extending between the first and second ends, the cavity having first and second non-parallel side edges, the cavity being open between the first and second side edges to form a tapered opening extending from the first end to the second end;
a scoop attached to the second end of the plunger, the scoop having a plunger tip forming a continuous, substantially planar, straight scraping edge separate from and extending beyond the first and second side edges; ...

Additionally, claim 1, as amended, further recites:

...
a handle attached to the first end of the plunger, the handle including a generally disc-shaped collar connected to the first end of the plunger, a constant diameter cylindrically shaped portion connected to the collar, and a top portion having a semi-spherically shaped dome and a substantially planar base, the top portion being connected to the cylindrical portion at the base.

Still further, claim 9, as amended, further recites:

...
a handle attached to the first end of the plunger, the handle including a generally frustoconically-shaped collar connected to

the first end of the plunger, and a top portion having a plurality of external ribs, the top portion being connected to the collar.

Claims 1 and 9 have each been amended to more particularly point out and claim the stirring stick plunger. In particular, claims 1 and 9 have been amended to recite that the plunger has only one trough-shaped cavity, having first and second non-parallel side edges. Claims 1 and 9 have been further amended to recite that the cavity is open between the first and second side edges between the first and second ends to form a tapered opening extending from the first end to the second end. Support for these amendments is found at least in the original drawings.

Claims 1 and 9 have each been further amended to more particularly point out and claim the stirring stick scoop. In particular, claims 1 and 9 have each been amended to recite a scoop attached to the second end of the plunger, the scoop having a plunger tip forming a continuous, substantially planar, straight scraping edge extending beyond the first and second side edges. Support for these amendments is also found at least in the original drawings.

Claim 1 has also been amended to more particularly point out and claim the stirring stick handle. In particular, claim 1 has been amended to recite that the handle includes a generally disc-shaped collar connected to the first end of the plunger, a constant diameter cylindrically shaped portion connected to the collar, and a top portion having a semi-spherically shaped dome and a substantially planar base, the top portion being connected to the cylindrically shaped portion at the base. Support for these amendments is found at least in original Figs. 1-5.

Claim 9 has also been amended to more particularly point out and claim the stirring stick handle. In particular, claim 9 has been amended to recite that the handle includes a generally frustoconically-shaped collar connected to the first end of the plunger, and a top portion having a plurality of external ribs, the top portion being connected to the collar. Support for these amendments is found at least in original Fig. 6.

Relative to the plunger recited in claims 1 and 9, as amended, Daniels fails to disclose only one trough-shaped cavity. Daniels discloses either a "spatula" like configuration (that is, no cavity) or an "X" or "+" configuration (that is, four cavities) (see page 4, paragraph [0045]). Furthermore, Daniels fails to disclose a tapered opening extending from a first end to a second

end of a plunger. The opening defined by fins 120 and 122 of Daniels has a constant width, and is not tapered between first and second ends.

Relative to the scoop recited in claims 1 and 9, as amended, Daniels fails to disclose a scoop having a plunger tip forming a continuous, substantially planar, straight scraping edge separate from and extending beyond first and second side edges. The bumper 126 of Daniels is not disclosed to form a substantially planar edge. Fig. 5, combined with the disclosure that fins 120 and 122 form a "+" shape, suggests that the bumper 126 is circular. However, Daniels is not entirely clear regarding the cross-sectional shape of the bumper 126. In any event, Daniels does not disclose a substantially planar, straight scraping edge.

Relative to the handle recited in claim 1, as amended, Daniels fails to disclose at least the features of: (1) a disc-shaped collar; (2) a constant diameter cylindrical portion; and (3) a top portion having a substantially planar base. Daniels discloses a ball portion 66 and a handle 70. The handle 70 is disclosed to be "bulbous, circular, or spherical" in shape (see paragraph [0036], page 3). The ball portion 66 and the handle 70 are illustrated (see, for example, Fig. 5) to be connected by an "hour-glass" shaped portion. The ball portion 66 of Daniels does not disclose a disc-shaped collar. The hour glass shaped portion does not disclose a constant diameter cylindrical portion. The handle 70 does not disclose a top portion having a substantially planar base.

Relative to the handle recited in claim 9, as amended, Daniels fails to disclose at least the features of a frustoconically shaped collar, and a top portion having a plurality of external ribs. The ball portion 66 of Daniels is suggested to be ball-shaped, and does not disclose a frustoconically shaped collar. The handle 70 is smooth, except for a central groove indentation, and does not disclose a plurality of external ribs.

As Daniels fails to disclose each and every element of claims 1 and 9, as amended, Applicant respectfully submits that claims 1 and 9 are not anticipated by Daniels, and requests that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection – 35 U.S.C. § 102 – Claims 1-4 and 6-8

The Examiner has rejected claims 1-4 and 6-8 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,636,390 (Strech). The Examiner states that Strech discloses an elongate plunger 10 having a cavity with a first end 17 and a second end 22, a handle 30A, 20, 22B, and including a scoop end at 22, 22A. The Examiner further states that the handle includes a disc collar 15B or a “generally” frustoconically shaped collar 15C and an opening in the handle. The rejections of claim 1 is respectfully traversed. Rejection of claims 2-4 and 6-8 under 35 U.S.C. § 102(b) as anticipated by Strech is moot in view of cancellation of these claims.

Referring to Figs. 1 and 3, Strech discloses a combination sink stopper and garbage scoop having an upper end and a lower end. A cylindrical side wall 23 proximate the lower end forms a scooping means 20. The side wall 23 forms a passageway between the upper and lower ends. A finger gripping means 30 is provided proximate the upper end. Strech further discloses a sealing means 15 having, in one embodiment, an S shaped angular wall 15C.

Relative to the plunger recited in claim 1, as amended, Strech fails to disclose at least the feature of an opening extending from a first to a second end of a cavity. The opening defined by curved edge 22 extends from edge portion 22A (which the Examiner has asserted discloses a second end of a cavity) to a point (along edge portion 22B) **intermediate** horizontal wall 17 (which the Examiner has asserted discloses a first end of a cavity). Thus, the opening formed by curved edge 22 does not extend from a first end to a second end of a cavity.

Relative to the scoop recited in claim 1, as amended, Strech fails to disclose a scoop having a plunger tip forming a continuous, substantially planar, straight scraping edge extending beyond first and second side edges. The curved edge 22 of Strech extends from first portion 22A to second opposing portion 22B. The first portion 22A is simply a continuous part of curved edge 22. The Examiner has identified first portion 22A as being capable of scraping if so desired. As first portion 22A is a continuous part of curved edge 22, Strech does not disclose a scraping edge separate from and extending beyond first and second side edges.

Relative to the handle recited in claim 1, as amended, Strech fails to disclose at least the features of a top portion having a semi-spherically shaped dome and a substantially planar base, the top portion being connected to a cylindrical portion at the base. Strech discloses a gripping means 30 including a gripping edge 30A having an inverted U-shape (see column 4, lines 13-15). The gripping means 30 fails to disclose either a semi-spherically shaped dome or a substantially planar base.

Furthermore, the combination sink stopper and garbage scoop of Strech clearly fails to disclose features of a blender (*i.e.*, “a blender base”, “a blender jar”, and “a blade set”) recited in claim 1.

As Strech fails to disclose each and every element of claim 1, as amended, Applicant respectfully submits that claim 1 is not anticipated by Strech, and requests that the rejection of claim 1 under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection – 35 U.S.C. § 102 – Claims 1-3, 9-11, and 14

The Examiner has rejected claims 1-4 and 6-8 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,250,771 (Berler). The Examiner states that Berler discloses an elongate plunger having a first end 22 and a second end, a cavity trough formed between sides 32, 34 to form a scoop, and a handle 26. The Examiner further states that Berler discloses a blender base with a blender processor jar of the type having a blade (extending) from the bottom of the jar. The rejections of claims 1 and 9 are respectfully traversed. Rejection of claims 2, 3, 10, 11, and 14 under 35 U.S.C. § 102(b) as anticipated by Berler is moot in view of cancellation of these claims.

Referring to Figures 1, 4, and 5, Berler discloses a food holder 18 adapted for use with a food processor 10. The food holder 18 comprises an elongated body portion 20, bent into an angle, forming sides 32 and 34. The food processor 10 includes a feed tube 16 disposed above a rotating element 12, for example a slicing disc. In use, an elongated vegetable, such as a carrot or cucumber, is impaled on the elongated body portion 20. The vegetable is fed through the feed tube 16 into the rotating element 12 to slice or otherwise process the vegetable. The sliced

vegetable is held in a container having a handle. The rotating element is positioned proximate an upper end of the container.

Relative to the plunger recited in claims 1 and 9, as amended, Berler fails to disclose a tapered opening extending from a first end to a second end of a plunger. Berler discloses an elongated body portion 20 comprising sides 32 and 34. Opposing edges of sides 32, 34 are disclosed to be parallel (see, for example, Figs. 4 and 5), and thus an opening formed by the opposing edges is not tapered.

Relative to the scoop recited in claims 1 and 9, as amended, Berler fails to disclose a scoop having a plunger tip forming a continuous, substantially planar, straight scraping edge separate from and extending beyond first and second side edges. Berler discloses a plurality of prongs 22 extending from a distal end of the elongated body portion 20. Berler does not disclose a substantially planar, straight scraping edge.

Relative to the handle recited in claim 1, as amended, Berler fails to disclose at least the features of a top portion having a semi-spherically shaped dome and a substantially planar base, the top portion being connected to the cylindrical portion at the base. Berler discloses a handle comprising a knob 26 with a flat top surface 26a (see column 4, lines 5-8). Berler does not disclose a semi-spherically shaped dome, nor a substantially planar base connected to a cylindrical portion.

Relative to the handle recited in claim 9, as amended, Berler fails to disclose at least the features of a frustoconically shaped collar and a top portion having a plurality of external ribs. A plate collar 24 of Berler is not frustoconically shaped. The knob 26 does not include a plurality of external ribs.

As Berler fails to disclose each and every element of claims 1 and 9, as amended, Applicant respectfully submits that claims 1 and 9 are not anticipated by Berler, and requests that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

Claim Rejection – 35 U.S.C. § 103 – Claims 7, 8, 15, and 16

The Examiner has rejected claims 7, 8, 15, and 16 under 35 U.S.C. § 103(a) as being unpatentable over Berler. The Examiner asserts that Berler discloses all of the recited subject matter, except for a collar in the form of a disc. The Examiner states that Berler discloses a collar shaped in a cylindrical shape 56, and asserts that it would have been obvious to one of ordinary skill in the art to make the collar in the form of a disc. Rejection of claims 7, 8, 15, and 16 under 35 U.S.C. § 103(a) as unpatentable over Berler is moot in view of cancellation of these claims.

Claim Rejection – 35 U.S.C. § 103 – Claims 5 and 13

The Examiner has rejected claims 5 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Berler in view of Daniels. The Examiner asserts that Berler discloses all of the recited subject matter, except for a handle being generally semi-spherical in shape. The Examiner states that Daniels discloses a beverage plunger stick 62 having a spherical-like end 70, and asserts that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to the spherical shape of Daniels. Rejection of claims 5 and 13 under 35 U.S.C. § 103(a) as unpatentable over Berler in view of Daniels is moot in view of cancellation of these claims.

Claim Rejection – 35 U.S.C. § 103 – Claims 12 and 13

The Examiner has rejected claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Berler in view of Strech. The Examiner asserts that Berler discloses all of the recited subject matter, except for a handle having an opening in fluid communication with a cavity, and having a plunger collar which is frustroconical in shape. The Examiner asserts that it would have been obvious to one of ordinary skill in the art to modify the shape of the handle 26 of Berler to a handle and collar having the frustroconical-like shape of Strech and to provide an opening through the handle of Berler connected to the trough cavity so that the handle might be gripped in a more ergonomic manner. Rejection of claims 12 and 13 under 35 U.S.C. § 103(a) as unpatentable over Berler in view of Strech is moot in view of cancellation of these claims.

New Claims 17-22

Applicant has added new dependent claims 17-22. Support for new claims 17-22 is found at least in the original drawings. Applicant submits that new claims 17-22 are allowable over the prior art of record. Accordingly, Applicant respectfully requests allowance of new claims 17-22.

CONCLUSION

In view of the foregoing amendment and remarks, Applicant respectfully submits that the present application, including claims 1, 9, and 17-22, is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,

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November 10, 2005 By: Martin G. Belisario
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